IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1666 OF 2007

Grace Plaza Commercial Co-op.
Housing Society (Proposed) ..Petitioners

versus

The Municipal Corporation of
Greater Mumbai & Ors. ..Respondents

Mr. R. M. Nakhwa with Mr. T. C. Deshpande i/b. Mr. Vasant Dhawan for the Petitioners.

Ms. A. R. Joshi for the Respondents.

CORAM : D.B. BHOSALE, J.
DATE : 24TH SEPTEMBER, 2007.

P.C.

1. Heard learned counsel for the parties.

2. Rule. By consent Rule made returnable forthwith. Mr. Joshi, waives service for the Respondents. The petition is taken up for hearing.

3. By this writ petition, the petitioners, the members of adhoc committee of Grace Plaza Commercial Co-operative Housing Society (Proposed), have

impugned a Warrant of Attachment dated 29.7.2006 (Exhibit "B" to the Petition) and imposition of penalty.

4. Counsel for the Petitioners states that the petitioners - society have in all 162 members, out of which 57 are defaulting members as enlisted in the first annexure to the affidavit dated 24.9.2007 filed by one Bora, the chairman of petitioners - society. He submits that the society has already applied under Section 209-A for issuance of unitwise bills to every member of the society. He further submits that the petitioners have also made representation to the Joint Municipal Commissioner seeking waiver of the penalty vide their letter dated 14.9.2007. It appears that except the aforesaid 57 members, all other members of the society, together have deposited a property tax of rupees twenty lacs and as of today the 57 members of the society only are in arrears of about Rs.23,72,494/= by way of property tax. The total penalty levied against the society is Rs.14,48,124/-. He submits that the society would not have any objection for attachment and auction of tenements in possession of the defaulting members

and in that event the society undertakes to admit the purchasers of the tenements as members of their society. The undertaking given by Mr. M.I.M. Vora, the Chairman of Petitioners - Society, dated 24.9.2007 is taken on record and marked 'X' for identification. Undertaking is accepted.

5. Having considered the submissions of the learned counsel for the parties, I am satisfied that the following order shall meet the ends of justice:-

(i) Warrant of Attachment dated 29.7.2006 in so far as the members of the society, who have paid the property taxes in respect of the tenements in their possession, stands quashed and set aside subject to the Order passed on the representation / letter dated 14.9.2007 of the society addressed to the Joint Municipal Commissioner seeking waiver of the penalty. If their representation is rejected, the petitioners society shall pay the penalty within a period of four weeks from the date of the order passed by the Joint Municipal Commissioner.

(ii) It is open for Respondent No. 5 to

verify the statement made by the learned counsel for the Petitioner regarding the payment being made by the society covering its all members, except the aforestated 57 defaulting members. If it is found that the statement is not correct respondent No.5 would be allowed to take appropriate steps to recover the difference including to execute the impugned warrant of attachment.

(iii) Insofar as 57 defaulting members are concerned, it is open for respondent No.5 to execute the Warrant of Attachment and to take all further steps to recover the property taxes in respect of the tenements in their possession.

With these directions the Rule stands disposed of.

(D. B. BHOSALE, J.)